

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 10:121. Plan review, annual permitting, and inspection fees for public swimming and bathing facilities, including splash pads operated by local governments.

RELATES TO: KRS 211.185~~[211.180(1)(c)]~~, 211.990(2)~~], 2000 Ky. Acts ch. 549, part I.A.41]~~

STATUTORY AUTHORITY: KRS 194A.050, 211.180(2) ~~[(1), (3), 2000 Ky. Acts ch. 549, part I.A.41]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 and 211.180(2)~~[(3) and 2000 Ky. Acts ch. 549, part I.A.41]~~ authorize the Secretary of the Cabinet for Health and Family Services to adopt a schedule of reasonable fees covering the costs for permitting and inspection of efforts regarding compliance with program standards administered by the cabinet. The fees shall be the total of the operational and administrative costs of the programs to the cabinet and to agencies as defined in KRS 211.185~~[cost of annual inspections performed by the Cabinet for Health Services or a local health department]~~. This administrative regulation establishes a schedule of fees for the cost of annual permitting and inspections of public swimming and bathing facilities, construction plan review, and construction inspection.

Section 1. Fees for Inspections. (1) A fee shall be required for inspections conducted by the cabinet or the local health department to determine compliance with:

(a) 902 KAR 10:120 for public swimming and bathing facilities; and

(b) 902 KAR 10:190 for splash pads operated by local governments.

(2) For public swimming and bathing facilities the annual inspection fee shall be:

(a) Assessed according to the total square footage of the water surface area;

(b) Calculated as established in this paragraph:

1. 1,000 square feet or less, the fee shall be ninety (90) dollars;

2. 1,001 to 1,500 square feet, the fee shall be \$150;

3. 1,501 to 2,000 square feet, the fee shall be \$200; and

4. 2,001 and above, the fee shall be \$200 plus fifty (50) dollars for each additional 500 square feet of water surface area; and

(c) Include seventy-five (75) dollars for each interactive water feature.

(3) For all beaches, the annual inspection fee shall be:

(a) Assessed according to the linear square footage of beach front;

(b) Calculated as established in this paragraph:

1. 149 or less linear square feet, the fee shall be ninety (90) dollars;

2. 150 to 200 linear square feet, the fee shall be \$175; and

3. 201 and above, the fee shall be \$175 plus fifty (50) dollars for each additional fifty (50) linear square feet; and

(c) Include seventy-five (75) dollars for each interactive or inflatable water feature.

(4) For splash pads operated by local governments the annual inspection fee shall be \$250 per year.

(5) For spas and hot tubs, the annual inspection fee shall be \$150 per year.

(6) The inspection fee required by this section shall be:

(a) Paid to the local health department having jurisdiction by check or money order made payable to the Kentucky State Treasurer;

(b) Deposited in the environmental fee account; and

(c) Sent to the Department for Public Health for deposit with the Kentucky State Treasury.

Section 2. Plan Review and Construction Inspection. (1) A fee shall be required for all plan reviews and construction inspections by the cabinet or the local health department to determine compliance with:

- (a) 902 KAR 10:120 for public swimming and bathing facilities; and
- (b) 902 KAR 10:190 for splash pads operated by local governments.

(2) The fee for plan review shall be calculated as follows:

- (a) Swimming and bathing facility plan review for gutter pools, the fee shall be \$315.
- (b) Swimming and bathing facility plan review for skimmer pools, the fee shall be \$157.50.
- (c) Swimming and bathing facility plan review for minor reconstruction, the fee shall be \$105.

(3) The fee required by subsection (2) of this section shall include seventy-five (75) dollars for each interactive water feature.

(4) The fee for swimming and bathing facility construction inspection shall be calculated as follows:

- (a) Pre-renovation evaluation, the fee shall be \$210.
- (b) Rough-in construction inspection, the fee shall be \$105.
- (c) Final construction inspection, the fee shall be \$157.50.

(5) The plan review and construction inspection fees required by this section shall be paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.

Section 3. Annual Permit Fee. (1) An annual permit fee of \$100 for all public swimming and bathing facilities, including beaches, and splash pads operated by local governments shall be:

(a) Paid no later than May 1 each year; and

(b) Paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.

(2) A late payment fee of fifty (50) dollars shall be assessed on all annual permits not received by May 1 each year. [Public swimming and bathing facilities shall be subject to the following fees:

(1) **Swimming** and bathing facility with a total water surface area of less than 1,000 square feet or less; and a beach front of 149 linear feet or less – eighty-seven (87) dollars per year.

(2) Swimming and bathing facility with a total water surface area of 1,001 square feet or more; and a beach front of 150 linear feet or more – \$167 per year.

(3) Swimming and bathing facility prerenovation evaluation – \$200.

(4) Swimming and bathing facility plan review for gutter pools – \$300.

(5) Swimming and bathing facility plan review for skimmer pools – \$150.

(6) Swimming and bathing facility plan review with minor reconstruction – \$100.

(7) Swimming and bathing facility rough-in construction inspection – \$100.

(8) Swimming and bathing facility final construction inspection – \$150.

Section 2. Payment of Fees. Fees shall be paid to the local health department having jurisdiction. Fees received by a local health department shall be deposited in the Kentucky State Treasury in a trust and agency account for use solely in administering the program. Inspection fees shall be submitted annually prior to May 1. Fees for a newly constructed facility shall be submitted initially at the preopening inspection and at each May 1 date thereafter.]

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 30, 2021

FILED WITH LRC: September 8, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fee amounts for reviewing construction plans and conducting construction inspections, annual fees for inspections of public swimming and bathing facilities including those with interactive water features, spray and splash pads or parks, and beaches, and fees for annual permitting of these facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a schedule of fees to help support the local health departments (LHD) and the cabinet in administering a program for public and semipublic swimming and bathing facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(2) authorizes the secretary to promulgate regulations to establish a fee schedule for permitting and annual inspection of efforts regarding compliance with program standards administered by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with addressing the cost to administer public swimming and bathing facility construction, permitting and inspection programs.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation establishes a reasonable schedule of fees necessary to help support LHDs and the cabinet for the costs of reviewing construction plans and conducting construction inspections, annual fees for inspections of public swimming and bathing facilities including those interactive water features, spray and splash pads or parks, and beaches, and fees for

annual permitting of these facilities. This change in the schedule of fees is consistent with the amount of time and effort expended by LHD and cabinet staff in conducting plan reviews and inspections based on the size and complexity of the establishment and the amount of time the establishment is open during the year that determines the number of inspections.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to offset the cost of administering this program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(2) authorizes the secretary to promulgate regulations to establish a fee schedule for permitting and annual inspection of efforts regarding compliance with program standards administered by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The increase in inspection and permitting fees will help to offset the costs incurred by the cabinet and LHD when inspecting, reviewing construction plan, and permitting public and semipublic swimming and bathing facilities. This will ensure all public and semipublic swimming and bathing facilities are in full compliance with program standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 2,250 public swimming pools, bathing facilities, and spas, and thirty-three (33) beaches regulated by the department. The department receives approximately 115 requests for plan review each year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The permitted swimming and bathing facilities will pay a set permitting fee based on the time required to administratively track and renew permits in the Environmental Health Management Information System (EHMIS) database. Fees for inspections are being increased since this regulation was last amended in 2001 to help recoup the cost borne by local health departments and the cabinet to administer this program based on current salary rates, time and effort expended dependent upon facility size and complexity and the number of months open throughout the year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): A reasonable schedule of permitting and inspection fees is established in this amendment which help LHDs and the cabinet partially recover the full cost of running these programs. These fees are based on current salary requirements, time and effort spent conducting inspections which is largely dependent on size and complexity and the number of months a facility is open during the year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All swimming and bathing facilities are required to be inspected and permitted by the cabinet. The fees paid for inspection and permitting help to ensure swimming and bathing facilities are in compliance with state laws.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The only additional cost will be to pay Custom Data Processing to update the inspection fees in EHMIS and to create a new permitting fee in EHMIS.

(b) On a continuing basis: There are no additional costs on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds received from the fees continue to be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: This amendment does result in an increase in fees paid by swimming and bathing facilities. There is no increase in funding necessary for this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The amendment to this administrative regulation increases the fees associated with operating public or semipublic swimming pools and recreational beach facilities. The administrative costs to local health departments and the cabinet is approximately \$150 per hour for local health department environmental health inspectors of swimming and bathing facilities. This cost includes the salary of the inspector, fiscal year 2018 Kentucky Employee Retirement System (KERS), Federal Insurance Contributions Act (FICA) contributions, and health and life insurance cost. The total costs across all local health departments and the state is approximately \$2,376,885 per year. The size and complexity of the establishment as well as the number of months the facility is open during a year all have an impact on the time required to conduct an inspection as well as the number of inspections performed throughout the year. All public and semi-public swimming and bathing facilities require a minimum of two (2) full facility inspections and monthly monitoring inspections per year. Facilities open year round will have a total of twelve (12) inspections while seasonal facilities will have a total of five (5) inspections.

The current fee structure for swimming pools is based on the total square footage of the water surface area and separated into two (2) categories of 1,000 feet or less and 1,001 feet or more. This fee structure does not take into account the complexity of the inspection required for larger swimming pools, nor does it account for interactive or specialized water features. The current fee structure for beaches is based on the linear square feet of the beachfront and is separated into two (2) categories of 149 feet or less and 150 feet or more. This does not account for the complexity of inspecting larger beach areas, nor does it account for interactive or inflatable water features.

Public and Semi-public Swimming Pools including spas, hot tubs, and splash pads	Current Fee Structure			
	Size of the pool	Number of pools	Current fee	Revenue
	1,000 or less square feet of surface water	1,350	\$87	\$117,450
	1,001 or more square feet of surface water	904	\$167	\$150,968
TOTAL		2,254		\$268,418
Beaches	Current Fee Structure			
	Size of the beach front	Number of beaches	Current fee	Revenue
	149 linear feet or less of beach front	10	\$87	\$870
	150 linear feet or more of beach front	24	\$167	\$4,008
TOTAL		34		\$4,878

The proposed fee structure for swimming pools keeps the categories based on total square footage for water surface area but adds two (2) additional categories of 1,001 to 1,500 square feet and 1,501 to 2,000 square feet. Swimming pools 2,001 square feet and more will pay an additional fifty (50) dollars for each additional 500 square feet. The proposed fee structure for

beaches adds one (1) additional category of 150 to 200 linear square feet. Beaches 201 or more linear square feet of beachfront will pay an additional fifty (50) for each additional 50 feet.

Public and Semi-public Swimming Pools	Proposed Fee Structure			
	Size of the pool	Number of pools	Proposed fee	Revenue
	1,000 or less square feet of surface water	1,350	\$90	\$121,500
	1,001 to 1,500 square feet of surface water	419	\$150	\$62,850
	1,501 to 2,000 square feet of surface water	143	\$200	\$28,600
	2,001 or more square feet of surface water	342	\$200+\$50 for each additional 500 square fee	\$68,400 (at a minimum)
TOTAL		2,254		\$281,350
Beaches	Size of the beach front	Number of beaches	Proposed fee	Revenue
	149 linear feet or less of beach front	10	\$90	\$900
	150 to 200 linear feet of beach front	10	\$175	\$1,750
	201 or more linear feet of beach front	14	\$175+\$50 for each additional 50 linear square feet	\$2,450 (at a minimum)
TOTAL		34		\$5,100

The proposed amendment to the fee structure includes the following new fees: seventy-five (75) dollars for each interactive water feature, including inflatable water features; \$150 for spas and hot tubs; \$250 for splash pads operated by local governments; and \$100 annual permit fee for all facilities.

(9) TIERING: Is tiering applied? (Explain why or why not.) Tiering is applied. The inspection of complex swimming and bathing facilities and the facilities open more than 5 months in a year (not seasonal) requires more time and attention to detail. These facilities will pay a larger annual inspection fee. All swimming and bathing facilities will pay the same annual permitting fee to cover the administrative cost of tracking these facilities in EHMS and renewing permits.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment impacts the Department for Public Health, Division of Public Health Protection and Safety, Environmental Management and Public Safety Branches, and all local health departments. Furthermore, those counties and municipalities that operate and maintain public swimming and bathing facilities will be impacted as will be the Kentucky Department of Parks which operates public swimming and bathing facilities including public beaches.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.180.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The change in fee structure will generate an estimated \$286,450 in the first year. The new permit fee will generate an estimated \$228,800 in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The change in fee structure will generate an estimated \$286,450 in subsequent years. The annual permit fee will generate an estimated \$228,800 in subsequent years.

(c) How much will it cost to administer this program for the first year? The costs associated with administering the permitting and inspection program is \$2,376,885.

(d) How much will it cost to administer this program for subsequent years? There will be no change in program cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: